U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO DISTRICT OFFICE Date: JAN 12 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen and father of a U.S. citizen child. He seeks a waiver of inadmissibility in order to remain in the United States with his family and adjust his status to that of a lawful permanent resident under INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved immediate relative filed on his behalf by his U.S. citizen wife.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, counsel contends that the applicant established extreme hardship would result to his U.S. citizen spouse if he is refused admission. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted fraudulent use of a passport to procure admission to the United States on or about September 21, 1998. *Decision of the District Director* (August 20, 2003) at 2. The district director's determination of inadmissibility is not contested by the applicant. Section 212(i) provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien himself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez,*

the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant's spouse (Ms. [redacted] is a 25-year-old naturalized U.S. citizen of Philippine descent. She immigrated to the United States when she was eight years old and became a U.S. citizen in 1994. Her mother and father live in the United States and are U.S. citizens. She also has two U.S. citizen brothers living in California. She and the applicant married in 2001, and lived with Ms. [redacted] parents until a 2001 fire seriously damaged the family home. The couple has one three-year-old U.S. citizen child. The record is silent as to whether Ms. [redacted] has remaining family ties in the Philippines. The applicant's mother lives in the United States and his father lives in the Philippines. The record is silent as to the immigration status of the applicant's mother.

Ms. [redacted] expresses concerns regarding country conditions in the Philippines, where she would relocate to avoid separation from the applicant. In particular, she cites the poor economic situation, low wages, inadequacy of health care, and devaluation of Philippine currency. She also is concerned about cultural readjustment after a long absence and having been raised in the United States during her formative years (since the age of 8). She also fears terrorism targeting U.S. interests and citizens in the Philippines. The applicant's father at one time "earned a good living working for the government," but the record is silent as to his current circumstances and ability to assist the applicant and his wife to readjust to the Philippines. *Psychological Evaluation of Lindsay Figuero [sic]*, at 2 (February 10, 2002).

The applicant works full-time as an Assistant Manager at a chain drug store. Ms. [redacted] did not finish high school and now works as a buyer for an auto parts shop. She states that the applicant provides about 50% of the couple's household income. She fears that she will be unable to afford the couple's monthly bills and may lose the family home if she remains in the United States without the applicant. She notes that the applicant works at night and is therefore available to care for their daughter during the day while Ms. [redacted] works. If the applicant is not admitted and she remains in the United States, she will need to pay for outside child care while she works. The financial impact of the denial of the applicant's admission was exacerbated by a

December 29, 2001 fire in the family home in which the couple "lost everything." *Declaration of Lindsay Figueroa,* at 3. *See also* Applicant's Exh. 7 (Fire Department Incident Report). The record contains documentation showing the economic and social conditions of the Philippines to include widespread poverty, low wages, high rates of unemployment, and, particularly in the south, danger from social unrest and terrorist activity. Ms[redacted] expresses concern that, if her husband is refused admission, he will be unable to find adequate employment to supplement her income in the United States and, if she relocates to the Philippines, she will be unable to find a job and will lose health insurance coverage.

The applicant, his wife, and daughter are in generally good health. The applicant contracted tuberculosis in 2002 and was prescribed medication. The couple's child experiences intermittent asthma. *Letter of Karen F. Shratter, MD* (September 10, 2003) (she "seems only to have symptoms when she develops viral illnesses and that occurs infrequently"). There is insufficient evidence on record to conclude that any family member suffers from a serious medical condition relevant to the extreme hardship determination.

Ms.[redacted] further expressed the emotional hardship she would face if the applicant were refused admission, and the additional burdens she would face raising their child alone. She is also concerned that the emotional and other hardships that her daughter would face will add to the overall hardship she will face herself.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Ms.[redacted] faces extreme hardship if the applicant is refused admission. The record demonstrates that she will face the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States, but not extreme hardship as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

Financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Inability to pursue one's chosen career or reduction in standard of living does not necessarily result in extreme hardship. *See Ramirez-Durazo v. INS,* 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent

a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.")

Therefore, the applicant's spouse faces, as all spouses facing deportation or refusal of admission of a spouse, the decision of whether to remain in the United States or relocate to avoid separation. The record does not support a finding that Ms. [redacted] would suffer extreme hardship is she relocated to the Philippines to avoid separation. The BIA has held, "[t]he mere election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *See Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.